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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al.,

Defendants.

) In Equity No. C-125-ECR

) Subfile No. C-125-B

) **WALKER RIVER IRRIGATION**  
) **DISTRICT'S REPLY POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **JOINT MOTION CONCERNING CASE**  
) **MANAGEMENT**

UNITED STATES OF AMERICA, WALKER  
RIVER PAIUTE TRIBE,

Counterclaimants,

v.

WALKER RIVER IRRIGATION DISTRICT,  
et al.,

Counterdefendants.

1     **I.       BACKGROUND**

2           On or about February 21, 2000, the Walker River Paiute Tribe (the "Tribe") and the  
3     United States filed their *Response of the United States and Walker River Paiute Tribe to Joint*  
4     *Motion By the State of Nevada and WRID Concerning Case Management* (the " Joint  
5     Response"). The Joint Response further demonstrates the disagreement between the parties  
6     with respect to case management at this early stage of the litigation. The Tribe and United  
7     States propose to bifurcate the claims related to the Walker River Indian Reservation (the  
8     "Tribal Claims") from all of the other claims asserted by the United States (the "Federal  
9     Claims"). They then identify threshold issues and equitable defenses which the Court would  
10    consider on the Tribal Claims. Discovery would be limited to those issues and the terms and  
11    conditions of such discovery would be established before necessary parties are joined. Simply  
12    put, this approach is premature. The Tribe and United States have placed the proverbial "cart  
13    before the horse" in proposing case management of this nature before all of the necessary  
14    parties have been joined.

15           The Walker River Irrigation District (the "District"), Nevada and California believe that  
16    case management at this stage of the litigation must address and be primarily limited to  
17    identifying, naming and joining all necessary parties. That task must be accomplished in  
18    accordance with Rules 4, 10 and 19 of the Federal Rules of Civil Procedure. Decisions on  
19    issues concerning bifurcation, phasing of the proceedings, identification of threshold issues and  
20    the scope and extent of discovery should be made only after all necessary parties have been  
21    joined and only with their participation. Their participation is mandatory in order to satisfy  
22    concepts of due process and fundamental fairness and to ensure that the Court's decisions bind  
23    all affected parties and their successors in the future.

24           The Case Management Order proposed by the Tribe and United States and their  
25    Response ignores these concerns. They cannot, however, be ignored.

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1 **II. THE TRIBE AND UNITED STATES OFFER NO EXPLANATION, NOR**  
2 **COULD THEY, FOR THEIR ARGUMENT THAT EFFICIENCY AND**  
3 **ECONOMY WILL RESULT FROM CASE MANAGEMENT BASED ON**  
4 **BIFURCATION AND THE EARLY IDENTIFICATION OF "THRESHOLD**  
**ISSUES" AND "EQUITABLE DEFENSES" WITHOUT THE PARTICIPATION**  
**OF ALL NECESSARY PARTIES**

5 **A. Bifurcation.**

6 Rather than demonstrating that bifurcation of the Tribal Claims from the Federal  
7 Claims will promote judicial economy and avoid inconvenience or prejudice to the parties, the  
8 Joint Response demonstrates the opposite. It acknowledges that the threshold issues to be  
9 addressed with respect to the Tribal Claims are also issues which must be addressed with  
10 respect to the Federal Claims. See Joint Response at p.2, Ins. 24-25. As the District established  
11 in its Opposition Points and Authorities such a bifurcation is inappropriate. See District  
12 Opposition at pgs. 3-5.

13 **B. Threshold Issues.**

14 The Tribe and United States argue at length that decisions concerning case  
15 management should be based on the current parties' identification of "threshold issues" and  
16 "equitable defenses." See Joint Response at 2 - 3. They completely fail, however, to offer any  
17 concrete "reasons" for basing case management decisions on these criteria. Instead, the Tribe  
18 and United States merely make unsupported assertions that proceeding in this manner is  
19 "logical, efficient, economic and just." The Tribe and United States assert that concentrating on  
20 threshold issues and resolving equitable defenses will conserve time<sup>1</sup> and resources thereby  
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24 <sup>1</sup> With respect to timing issues, the statements that the "current effort to proceed with the  
25 counterclaims began in 1992 on behalf of and regarding the Tribal Claims" and that the "Tribe  
26 should not have to remain on the sideline while other claims and issues are litigated" is  
27 incredible. The Tribe and United States have sought and received thirteen extensions of time to  
28 join necessary parties and complete service of process since 1993. The Tribe amended its  
counterclaim to include claims for groundwater. The United States amended its counterclaim  
to include additional claims for the Tribe and to include claims on behalf of numerous other  
Tribal and Federal interests in the Walker River Basin. Under these circumstances, the parties  
responsible for any delay in the prosecution of the Tribal Claims are clearly the United States  
and the Tribe.

1 resulting in the efficient management of the case. That assertion may hold true at some later  
 2 stage of the litigation, however, it is premature at this early stage. The identification of all  
 3 threshold issues and equitable defenses cannot occur until after all necessary parties have been  
 4 joined. Those necessary parties must participate in decisions involving the identification of  
 5 threshold issues and equitable defenses. Proceeding without them in this process is futile. It  
 6 can only result in subsequent challenges by necessary parties based on the fact that decisions  
 7 were made, without their participation, that impact and possibly impair their interests. It can  
 8 only result in current parties having to revisit issues. Under these circumstances, deciding case  
 9 management issues based on the premature identification of threshold issues and defenses  
 10 cannot be "logical, efficient, economic and just."

### 11 **III. JOINDER**

#### 12 **A. The Parties Who The Tribe And The United States Would Not Join.**

13 The Joint Response argues that the District's proposal for case management will  
 14 result in the joinder of parties who may not be necessary and thereby result in those parties and  
 15 the Tribe and United States incurring unnecessary litigation costs. Joint Motion 4 - 5. In  
 16 making this argument, however, the Tribe and United States conspicuously fail to identify these  
 17 potentially unnecessary parties, with the exception of California groundwater users, and to  
 18 explain why they may be unnecessary. Even after identifying California groundwater users as  
 19 unnecessary the Tribe and United States fail to explain why they are unnecessary. The District  
 20 in its Opposition has identified other categories of parties who the Tribe and the United States  
 21 would not join and has explained why they must be joined. See District Opposition at pgs. 6-8.  
 22 Finally, the Court should err on the side of Joinder given the wasted litigation costs that all  
 23 parties will incur if these allegedly "unnecessary" parties ultimately turn out to be "necessary."

#### 24 **B. Identification of Parties**

25 The Joint Response argues that it "will be unnecessarily time-consuming for the  
 26 United States and the Tribe to be left to identify" the proposed defendants "on their own." See  
 27 Joint Response at 4. The District has already discussed the reasons for requiring the Tribe and  
 28 United States to shoulder the burden of identifying the defendants in this matter. See District

1 Opposition at 9 -11. That discussion will not be restated here. The Tribe and United States  
 2 have alleged numerous claims in their Amended Counterclaims. They must invest the time and  
 3 resources necessary to identify the parties necessary in order to prosecute those claims.

4 The United States and the Tribe refer to the "Mineral County experience" with  
 5 respect to identification and service on parties. The best way to avoid the "Mineral County  
 6 experience" is for the United States and the Tribe to accept the responsibility of identifying and  
 7 properly serving the parties. If they approach this responsibility in the same irresponsible  
 8 manner as has Mineral County, there is no question that they will encounter similar problems.

9 The Joint Motion argues that "it may not be reasonable, practical, or even  
 10 possible, to hold up service until all parties" are identified "with absolute certainty." See Joint  
 11 Motion at 5. The justification for this statement is that the ownership of water rights is  
 12 constantly changing. It may be true that service should commence before "all parties" are  
 13 identified with "absolute certainty." Nevertheless, any addition of parties by the Tribe and  
 14 United States after service has commenced must be accomplished by an appropriate motion.  
 15 That motion must set forth the factual and legal bases for the addition of parties to the  
 16 litigation. The Court has already clearly defined the procedure to be utilized in this regard in  
 17 the C-125-C action. See March 2, 1999 Order Doc. No. 257.

#### 18 **IV. DISCOVERY**

19 The limitations placed on the scope and extent of discovery at this stage of the litigation  
 20 should not be based solely on the current parties' identification of threshold issues and  
 21 defenses. The Tribe and United States "have proposed that procedures as to the scope and  
 22 timing of discovery should only be addressed once it is clear which issues are the present focus  
 23 of the litigation." Joint Response at 3. For the reasons stated above, however, the final  
 24 clarification of threshold issues should not occur until after all necessary parties are joined in  
 25 the litigation. All necessary parties may then participate in the identification of threshold issues  
 26 and defenses and the related extent and scope of discovery.

27 The Tribe and United States also object to any discovery concerning the nature of their  
 28 claims as set forth in the Amended Counterclaims. They allege that discovery of this nature

1 would interfere with service efforts, proliferate the issues and possibly result in a significant  
2 waste of resources. Once again, the Tribe and United States make broad conclusory statements  
3 completely unsupported by any factual or legal basis. First, the discovery proposed by the  
4 District is not "open-ended". See Joint Response at p. 3. It is written discovery aimed at the  
5 contentions of the Tribe and the United States. Such discovery is essential to informed case  
6 management once the necessary parties are identified and served.

7       The need for written discovery concerning the contentions of the United States and the  
8 Tribe results from the broad nature in which their claims are plead. The majority of the claims  
9 of the Tribe and United States are based on the federal implied reservation of water doctrine. A  
10 fundamental element of that doctrine is the implication that the United States reserved a  
11 quantity of water necessary to fulfill the purpose for which a reservation or other federal  
12 enclave was established. The numerous federal reserved claims set forth in the Amended  
13 Counterclaims contain little or no detail concerning the purpose for which the reservation or  
14 federal enclave at issue was established.

15       Furthermore, the Amended Counterclaims of both the Tribe and United States contain  
16 claims for storage rights in Weber Reservoir. The basis for the storage right claim is not set  
17 forth in the Amended Counterclaims. The Amended Counterclaim of the United States also  
18 contains several claims for water rights under Nevada and California law. The nature and  
19 extent of those claims, however, is not plead.

20       Under these circumstances, the necessary parties must be allowed discovery concerning,  
21 among other things, the purpose for which the reservation or enclave at issue was established,  
22 the nature of the storage right sought for Weber Reservoir and the nature and extent of water  
23 rights claimed by the United States under Nevada and California law. They must be allowed to  
24 identify and obtain copies of the documents which are alleged to support those claims. Without  
25 that discovery, it is impossible for the necessary parties to identify all affirmative defenses and  
26 issues which should be considered for resolution as threshold issues in future case management  
27 orders.

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V. ANSWERS OR NOTICES OF APPEARANCE.

The Tribe and United States argue that defendants should be required to file answers to their First Amended Counterclaims. See Joint Opposition at 6. Because of the manner in which they have plead their claims, most answers will involve general denials and inclusion of basic affirmative defenses. If answers are required at the outset, provision should be made for later amendments without the need for motions. Amendments may be necessary after limited contention discovery. In addition, amendments to include counterclaims and cross-claims may be needed once jurisdictional and other issues concerning the scope of the litigation have been decided.

Dated this 7<sup>th</sup> day of March, 2000.

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**CERTIFICATE OF MAILING**

I certify that I am an employee of Woodburn and Wedge and that on this date, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing ***WALKER RIVER IRRIGATION DISTRICT'S REPLY POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION CONCERNING CASE MANAGEMENT*** in an envelope addressed to:

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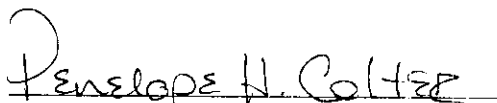
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